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VIA ECF

Hon. Ona T. Wang
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

RE: *Authors Guild et al. v. OpenAI, Inc., et al., and Alter et al. v. OpenAI Inc., et al.*, Case Nos. 1:23-cv-08292-SHS & 1:23-cv-10211-SHS

Dear Judge Wang:

Pursuant to Rule IV.a. of Your Honor's Individual Practices, we submit this letter-motion to seal on behalf of the OpenAI Defendants ("OpenAI") in the above-captioned matters in connection with Plaintiffs' motions to compel at ECF Nos. 345, 351, 355, 359, 361, 364, and 365 and OpenAI's letter briefs in opposition filed concurrently herewith, as well as specified accompanying exhibits.

I. INTRODUCTION

The information OpenAI seeks to seal comprises (1) highly sensitive technological markers that pose data security threats to OpenAI if disclosed; (2) proprietary information concerning OpenAI's technology and business that could be unfairly used by its competitors if made public; and (3) information on OpenAI's partnership with Microsoft that would threaten its competitive standing in the market and potentially violate confidentiality provisions if not protected. Each category of information would harm OpenAI if disclosed, and each easily satisfies the standard for sealing documents submitted in connection with discovery motions.

II. LEGAL STANDARD

OpenAI's sealing request is consistent with the Second Circuit's guidance in *Lugosch v. Pyramid Company of Onondaga*, 435 F.3d 110 (2d Cir. 2006), and *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132 (2d Cir. 2016).

As those cases recognize, there is a qualified First Amendment and common law interest in access to judicial proceedings and certain judicial filings. *Lugosch*, 435 F.3d at 120. For the presumption to attach, however, a document must be considered a "judicial document," meaning it is both "relevant to the performance of the judicial function and useful in the judicial process." *Id.* at 119. Even for judicial documents, the weight accorded to the presumption of access varies based on the role the material plays in the adjudication and the degree to which access to the material would materially assist the public in understanding the issues before the court. *Id.*; see also *Bernstein*, 814 F.3d at 139.

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As the Second Circuit has recognized, the presumption of public access to filings submitted in connection with discovery disputes is “generally somewhat lower” than the presumption applied to material introduced at trial, or in connection with a dispositive motion. *See Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019). As a result, the standard for sealing is commensurately lower for such materials. While courts still must articulate specific and substantial reasons for sealing such material, “the reasons usually need not be as compelling as those required to seal filings connected to a dispositive motion.” *Id.*

As set forth below, while OpenAI would meet a more rigorous “compelling need” standard based on the nature of the materials it seeks to seal, it easily meets the lower standard that courts routinely apply to materials submitted in connection with discovery motions.

III. OPENAI’S CONFIDENTIAL INFORMATION WARRANTS SEALING

The documents OpenAI seeks to keep redacted or under seal fall under one or more of the following categories. Each merits sealing.

Category (i). Internal URLs, filenames, hyperlinks, user IDs, and other technological markers are highly sensitive and warrant redaction. *See Rand v. Travelers Indemnity Company*, No. 21-CV-10744, 2023 WL 4636614, at *2-3 (S.D.N.Y. July 19, 2023) (sealing information that could pose cybersecurity threats to organization if released). Disclosure of this information could compromise OpenAI’s internal safety and security measures. *See Zbrozek Decl.* ¶ 5. OpenAI treats such information as confidential or highly confidential, generally does not publicly disclose it, and takes affirmative steps to protect the confidentiality of such information. *Id.*

Documents containing category (i) material are cited by ECF number in the table that follows. As noted in the table, OpenAI requests redaction of documents, as opposed to sealing of a document in total, wherever possible.¹

Description	AG ECF No.	Alter ECF No.	Redact or Seal
Exhibit 2 to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-2	ECF No. 296-2	Seal
Exhibit 3 to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-3	ECF No. 296-3	Seal
Letter Motion to Compel Production of Privileged Documents	ECF No. 351	ECF No. 301	Redact

¹ OpenAI’s proposed redactions are reflected in yellow in the documents attached hereto, unless the document already contained yellow highlighting from Plaintiffs’ filing, in which case proposed redactions appear in green.

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Description	AG ECF No.	Alter ECF No.	Redact or Seal
Exhibit 4 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-4	ECF No. 301-4	Seal
Exhibit 5 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-5	ECF No. 301-5	Seal
Exhibit 6 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-6	ECF No. 301-6	Seal
Exhibit 7 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-7	ECF No. 301-7	Seal
Exhibit 8 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-8	ECF No. 301-8	Seal
Exhibit 9 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-9	ECF No. 301-9	Seal
Exhibit 10 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-10	ECF No. 301-10	Seal
Exhibit 11 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-11	ECF No. 301-11	Seal
Exhibit 1 to Letter Motion to Compel Responses to RFAs	ECF No. 355	ECF No. 306	Redact
Exhibit C to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-3	ECF No. 318-3	Seal
Exhibit D to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-4	ECF No. 318-4	Seal
Exhibit H to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-8	ECF No. 318-8	Seal
Exhibit A to Letter Motion to Compel Production of Documents Pursuant to Crime Fraud Exception	ECF No. 364-1	ECF No. 314-1	Seal
Exhibit C to Letter Motion to Compel Production of Documents Pursuant to Crime Fraud Exception	ECF No. 364-3	ECF No. 314-3	Seal
Exhibit 11 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-11	315-11	Seal

Category (ii). The specific processes that OpenAI employs to train and test ChatGPT models, including the sources and specific amounts of data, data collection and acquisition techniques, confidential meetings about dataset development, allocation of curated data in training datasets, and confidential technical know-how constitute highly sensitive proprietary

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information. OpenAI treats such information as confidential or highly confidential and generally does not publicly disclose this type of information. *See* Zbrozek Decl. ¶ 6. Moreover, disclosure of such information would give OpenAI’s competitors insight into its proprietary development processes and cause competitive harm to OpenAI in a nascent and highly competitive market. *Id.*

This type of information routinely is deemed confidential and filed under seal. *See IBM Corp. v. Micro Focus (US), Inc.*, No. 22-CV-9910 (VB)(VR), 2024 WL 495137, at *1 (S.D.N.Y. Feb. 8, 2024) (“Courts in this District routinely permit parties to seal or redact commercially sensitive information to protect confidential business interests and financial information.”); *Kewazinga Corp. v. Microsoft Corp.*, No. 1:18-cv-4500-GHW, 2021 WL 1222122, at *7 (S.D.N.Y. Mar. 31, 2021) (sealing “confidential and proprietary data collection procedures”); *Louis Vuitton Mallatier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (sealing “business information and strategies, which, if revealed, may provide valuable insights into a company’s current business practices that a competitor would seek to exploit” (internal quotation marks omitted)).

Documents containing category (ii) material are cited by ECF number in the table that follows. As noted in the table, OpenAI requests redaction of documents, as opposed to sealing of a document in total, where possible.

Description	AG ECF No.	Alter ECF No.	Redact or Seal
Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345	ECF No. 296	Redact
Exhibit B to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-2	ECF No. 296-2	Seal
Exhibit C to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-3	ECF No. 296-3	Seal
Exhibit D to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-4	ECF No. 296-4	Seal
Exhibit E to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-5	ECF No. 296-5	Seal
Exhibit F to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-6	ECF No. 296-6	Seal
Exhibit G to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-7	ECF No. 296-7	Seal

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Description	AG ECF No.	Alter ECF No.	Redact or Seal
Exhibit H to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-8	ECF No. 296-8	Seal
Exhibit I to Letter Motion to Compel Custodial Production from Lampe, Zaremba, and Lightcap	ECF No. 345-9	ECF No. 296-9	Seal
Letter Motion to Compel Production of Privileged Documents	ECF No. 351	ECF No. 301	Redact
Exhibit 4 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-4	ECF No. 301-4	Seal
Exhibit 5 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-5	ECF No. 301-5	Seal
Exhibit 6 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-6	ECF No. 301-6	Seal
Exhibit 7 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-7	ECF No. 301-7	Seal
Exhibit 8 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-8	ECF No. 301-8	Seal
Exhibit 9 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-9	ECF No. 301-9	Seal
Exhibit 10 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-10	ECF No. 301-10	Seal
Exhibit 11 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-11	ECF No. 301-11	Seal
Letter Motion to Compel Responses to RFAs	ECF No. 355	ECF No. 306	Redact
Exhibit 1 to Letter Motion to Compel Responses to RFAs	ECF No. 355-1	ECF No. 306-1	Seal
Letter Motion to Compel Co-Defendant Microsoft to Produce Financial Documents	ECF No. 359	ECF No. 308	Redact
Exhibit D to Letter Motion to Compel Co-Defendant Microsoft to Produce Financial Documents	ECF No. 359-4	ECF No. 308-4	Seal
Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361	ECF No. 318	Redact
Exhibit A to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-1	ECF No. 318-1	Seal
Exhibit C to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-3	ECF No. 318-3	Seal

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Description	AG ECF No.	Alter ECF No.	Redact or Seal
Exhibit D to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-4	ECF No. 318-4	Seal
Exhibit E to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-5	ECF No. 318-5	Seal
Exhibit F to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-6	ECF No. 318-6	Seal
Exhibit G to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-7	ECF No. 318-7	Seal
Exhibit H to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-8	ECF No. 318-8	Seal
Exhibit I to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-9	ECF No. 318-9	Seal
Letter Motion to Compel Production of Documents Pursuant to Crime Fraud Exception	ECF No. 364	ECF No. 314	Redact
Exhibit A to Letter Motion to Compel Production of Documents Pursuant to Crime Fraud Exception	ECF No. 364-1	ECF No. 314-1	Seal
Exhibit B to Letter Motion to Compel Production of Documents Pursuant to Crime Fraud Exception	ECF No. 364-2	ECF No. 314-2	Seal
Exhibit C to Letter Motion to Compel Production of Documents Pursuant to Crime Fraud Exception	ECF No. 364-3	ECF No. 314-3	Seal
Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365	ECF No. 315	Redact
Exhibit 2 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-2	ECF No. 315-2	Seal
Exhibit 4 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-4	ECF No. 315-4	Seal
Exhibit 5 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-5	ECF No. 315-5	Seal
Exhibit 6 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-6	ECF No. 315-6	Seal
Exhibit 7 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-7	ECF No. 315-7	Seal

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Description	AG ECF No.	Alter ECF No.	Redact or Seal
Exhibit 11 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-11	ECF No. 315-11	Seal
Letter Brief in Opposition to Letter Motion to Compel Responses to RFAs	Attached hereto	Attached hereto	Redact
Letter Brief in Opposition to Letter Motion to Compel Production of Documents Pursuant to Crime Fraud Exception	Attached hereto	Attached hereto	Redact

Category (iii). OpenAI treats discussions with, and internal discussions about, current and potential business partners, especially as they relate to quotes or strategic decisions, as confidential or highly confidential given the highly competitive nature of the artificial intelligence industry. *See Zbrozek Decl.* ¶ 7. OpenAI generally does not publicly disclose strategic decision-making deliberations concerning actual or potential business relationships to prevent competitive harm to OpenAI. *Id.* Moreover, OpenAI and certain partners have express agreements with confidentiality provisions that prevent public disclosure of confidential facts about the companies' business relationships. *Id.* Public disclosure of category (iii) information would cause competitive harm to OpenAI, given the highly competitive nature of the artificial intelligence industry with global stakeholders and could cause violation of OpenAI's confidentiality agreements with third parties. *See FuboTV Inc. v. Walt Disney Company*, No. 24-CV-01363, 2024 WL 1884974, at *1 (S.D.N.Y. Apr. 30, 2024) (sealing and redacting commercially sensitive and confidential business information, including agreements between plaintiff and defendant on business strategies).

Documents containing category (iii) material are cited by ECF number in the table that follows. As noted in the table, OpenAI requests redaction of documents, as opposed to sealing of a document in total, wherever possible.

Description	AG ECF No.	Alter ECF No.	Redact or Seal
Exhibit 9 to Letter Motion to Compel Production of Privileged Documents	ECF No. 351-9	ECF No. 301-9	Seal
Letter Motion to Compel Co-Defendant Microsoft to Produce Financial Documents	ECF No. 359	ECF No. 308	Redact
Exhibit D to Letter Motion to Compel Co-Defendant Microsoft to Produce Financial Documents	ECF No. 359-4	ECF No. 308-4	Seal
Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361	ECF No. 318	Redact

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Description	AG ECF No.	Alter ECF No.	Redact or Seal
Exhibit A to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-1	ECF No. 318-1	Seal
Exhibit I to Letter Motion to Compel Deposition of Greg Brockman	ECF No. 361-9	ECF No. 318-9	Seal
Exhibit C to Letter Motion to Compel Production of Documents Pursuant to Crime Fraud Exception	ECF No. 364-3	ECF No. 314-3	Seal
Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365	ECF No. 308	Redact
Exhibit 2 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-2	ECF No. 315-2	Seal
Exhibit 4 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-4	ECF No. 315-4	Seal
Exhibit 5 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-5	ECF No. 315-5	Seal
Exhibit 6 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-6	ECF No. 315-6	Seal
Exhibit 7 to Letter Motion to Compel Inspection of Co-Defendant Microsoft's Data	ECF No. 365-7	ECF No. 315-7	Seal

IV. OPENAI'S SEALING REQUESTS ARE NARROWLY TAILORED

OpenAI has precisely identified the portions of Plaintiffs' letter motions, exhibits attached thereto, and Defendants' opposition briefs that would cause OpenAI harm if disclosed, leaving the balance unredacted and open to the public. *See* Zbrozek Decl. ¶ 8. Where OpenAI seeks to file an entire exhibit under seal, it is because confidential information appears throughout the document, making redaction inadequate to protect OpenAI. *Id.* OpenAI has not sought to seal all material it has designated as Protected Discovery Material under the Protective Order, but instead made individual determinations as to the propriety of sealing.

Accordingly, in order to maintain the confidential nature of this information, OpenAI respectfully requests the Court grant this motion to seal.

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V. OPENAI TAKES NO POSITION ON WHETHER PLAINTIFFS' CONFIDENTIAL INFORMATION WARRANTS SEALING

Under paragraph 25 of the Stipulated Protective Order in this case (ECF No. 338), OpenAI also respectfully seeks to provisionally file under seal portions of a letter brief in opposition to Plaintiffs' letter motion to compel responses to RFAs, as well as one exhibit produced by Plaintiffs because the exhibit and the letter brief in opposition include and discuss documents that Plaintiffs have designated as Protected Discovery Material under the Protective Order. ECF No. 338 at ¶ 25. Under the Protective Order, Plaintiffs have five business days to file a statement of reasons why the material should be sealed. *Id.* OpenAI will review Plaintiffs' filings, and if necessary, confer about any disagreement. The material is summarized in the table that follows.

Description	Redact or Seal
Text in Footnote 1 to the Letter Brief in Opposition to Letter Motion to Compel Responses to RFAs from HARPERCOLLINS-0000442	Redact
Exhibit B to Letter Brief in Opposition to Letter Motion to Compel Production of Privileged Documents	Seal

Sincerely,

MORRISON & FOERSTER LLP

/s/ John R. Lanham

John R. Lanham

KEKER, VAN NEST & PETERS LLP

/s/ Christopher Sun

Christopher Sun

LATHAM & WATKINS LLP

/s/ Elana Nightingale Dawson

Elana Nightingale Dawson